



# City of NORFOLK

C: Dir., Department of General Services

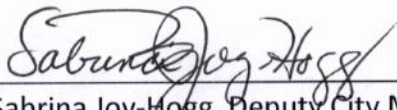
To the Honorable Council  
City of Norfolk, Virginia

August 25, 2015

From: David S. Freeman, AICP  
Director of General Services

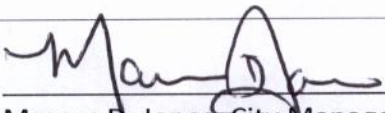
**Subject:** Encroachment Agreement  
for Outdoor Dining at 759 Granby  
Street

Reviewed:

  
Sabrina Joy-Hogg, Deputy City Manager

**Ward/Superward:** 2/6

Approved:

  
Marcus D. Jones, City Manager

**Item Number:**

**R-15**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** 759 Granby, LLC d/b/a Work/Release  
Building Owner: 759 Granby LLC

III. **Description:**

This agenda item is an Encroachment Agreement between the City of Norfolk ("City") and 759 Granby, LLC d/b/a Work/Release ("Work/Release") to permit an encroachment of 610 square feet for the purpose of outdoor dining.

IV. **Analysis**

This encroachment will permit 759 Granby, LLC d/b/a Work/Release to erect a railing structure to enclose tables and chairs, awnings, signage, and a fire escape into the City's rights-of-way of Granby Street and Olney Road at 759 Granby Street for the purpose of outdoor dining in conjunction with the operation of its dining facility. The City is named as additional insured.

Hours of Operation:	Seating Capacity:
8:00 a.m. until 2:00 a.m. seven days a week	32

V. **Financial Impact**

The encroachment area is 610 square feet at the rate of \$6.00 per square foot which constitutes annual rent in the amount of three thousand six hundred sixty dollars (\$3,660.00) OR monthly rent in the amount of three hundred five dollars (\$305.00).

**VI. Environmental**

There are no known environmental issues associated with this property.

**VII. Community Outreach/Notification**

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

**VIII. Board/Commission Action**

The outdoor dining request was approved by the Design Review Committee.

**IX. Coordination/Outreach**

This ordinance has been coordinated with the Department of General Services – Office of Real Estate and the City Attorney's Office.

**Supporting Material from the City Attorney's Office:**

- Ordinance
- Encroachment Agreement

08/06/15

Form and Correctness Approved:

By

Office of the City Attorney

NORFOLK, VIRGINIA

Contents Approved:

By  
DEPT.

## ORDINANCE No.

AN ORDINANCE APPROVING AN ENCROACHMENT AGREEMENT WITH 759 GRANBY, LLC, DBA WORK/RELEASE, FOR OUTDOOR DINING AT THE CORNER OF GRANBY STREET AND OLNEY ROAD.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and provisions of the Encroachment Agreement between the City of Norfolk and 759 Granby, LLC, a copy of which is attached hereto as Exhibit A, by which the City of Norfolk authorizes 759 Granby, LLC dba Work/Release, to encroach into the right of way of Granby Street and Olney Road, at 759 Granby Street, with an area measuring 5' by 27' on Granby Street and 5' by 95' on Olney Road, upon certain conditions specifically set forth therein, is hereby approved.

Section 2:- That the terms and conditions of the Encroachment Agreement are hereby approved and the City Manager is hereby authorized to execute the Encroachment Agreement and do all things necessary for its implementation.

Section 3:- That this ordinance shall be in effect from and after its adoption.



## **ENCROACHMENT AGREEMENT**

This Encroachment Agreement (hereinafter "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the **City of Norfolk**, a municipal corporation of the Commonwealth of Virginia (hereinafter "City"), and **759 Granby, L.L.C. dba Work/Release** (hereinafter "Work/Release").

### **WITNESSETH:**

1. **ENCROACHMENT AREA.** City hereby grants permission to Work/Release to encroach into the right of way of Granby Street and Olney Road at 759 Granby Street, with two areas measuring approximately 5' by 27' on Granby Street and approximately 5' by 95' on Olney Road, with a total of 610 square feet, as shown in **Exhibit A-1** attached hereto ("Encroachment Area"), for the purpose of outdoor dining with railings, awnings, and signage as shown in **Exhibit A-2**, and no other purpose. City also grants Work/Release permission to encroach into Olney Road with a fire escape as shown in **Exhibit A-1**.

2. **USE.** Work/Release shall be permitted to occupy the Encroachment Area for outdoor dining uses in conjunction with the operation of its business as a dining facility.

3. **TERM; TERMINATION.** The term of the permission to encroach granted hereby shall be no longer than five (5) years and shall commence on September, 1, 2015, or upon the effective date of any authorizing ordinance, whichever shall last occur, and shall terminate on August 31, 2020. However, it is expressly understood that the permission granted hereby is expressly subject to the right of revocation by the Norfolk City Council, and that in the event of such revocation, Work/Release, or its successors or assigns, if requested by City, shall remove the encroaching structures and shall cease using the Encroachment Area.

4. **COMPENSATION.** As compensation for the privilege of encroaching into the right of way, Work/Release shall pay City annual rent in the amount of Three Thousand

Six Hundred Sixty and 00/100 Dollars (\$3,660.00) in monthly installments of \$305.00 beginning on the first day of September, 2015 or the day the ordinance is effective whichever is later. The rent shall be paid by check payable to the Norfolk City Treasurer and sent to the Real Estate Office, Department of General Services, 232 E. Main Street, Suite 250, Norfolk, Virginia 23510.

5.     **LATE FEES.** For any late payments received 15 days after the first of each month, Work/Release shall pay a late fee of five percent (5%) of the amount not paid when due.

6.     **UTILITIES.** City shall not be responsible for utilities of any type used within the Encroachment Area. Work/Release shall pay all utility meter and utility services charges for all utilities, including but not limited to gas, electricity, water, telephone, sewer, and any other necessary to serve the Encroachment Area.

7.     **REPAIRS.** Work/Release shall keep and maintain the Encroachment Area in good and complete state of repair and condition. Work/Release shall make all repairs and replacements of every kind to the sidewalks and paved areas of the Encroachment Area in order to preserve and maintain the condition of the Encroachment Area. All such repairs and maintenance shall be performed in a good and workmanlike manner, be at least equal in quality and usefulness to the original components, and not diminish the overall value of the Encroachment Area.

8.     **REQUIREMENTS OF PUBLIC LAWS.** Work/Release shall suffer no waste or injury to the Encroachment Area and shall comply with all federal, state and municipal laws, ordinances and regulations applicable to the structure, use and occupancy of the Encroachment Area. In addition, Work/Release shall effect the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the Encroachment Area.



9. **CITY'S RIGHT TO ENTER AND CURE.** City shall retain the right to enter upon the Encroachment Area at any time for the purpose of inspecting the Encroachment Area, ascertaining compliance with this Agreement, and making any repairs which City deems necessary as a consequence of any failure of Work/Release to meet its obligations under this Agreement. The cost of any such repairs shall be deemed additional compensation payable to the City on demand. Any entry upon the Encroachment Area or cure and repair shall be accomplished by City at reasonable times and in the exercise of reasonable discretion by the City. The making of any repairs by City shall not constitute a waiver by City of any right or remedy upon Work/Release default in making repairs.

10. **NOTICE.** Any notice shall be in writing and shall be delivered by hand or sent by United States Registered or Certified Mail, postage prepaid, addressed as follows:

To City: Department of General Services – Real Estate Office  
232 E. Main Street, Suite 250  
Norfolk, Virginia 23510

With copies to: City Attorney  
900 City Hall Building  
810 Union Street  
Norfolk, Virginia 23510

To Work/Release: Work/Release  
759 Granby, LLC  
160 W. Brambleton Avenue  
Norfolk, VA 23510

Either party hereto may change its address to which said notice shall be delivered or mailed by giving notice of such change as provided above. Notice shall be deemed given when delivered (if delivered by hand) or when postmarked (if sent properly by mail).

11. **ENVIRONMENTAL MATTERS.** Work/Release agrees that it will not introduce onto the Encroachment Area any toxic, hazardous or dangerous materials unless such material is stored, safeguarded, or used in accordance with applicable laws and regulations.

Work/Release will not allow any air, water or noise pollution to occur in the Encroachment Area. Work/Release hereby agrees to use and occupy the Encroachment Area in a safe and reasonable manner and in accordance with applicable law.

City in turn agrees that Work/Release shall not be responsible or assume liability for environmental conditions existing on or about the Encroachment Area prior to Work/Release occupancy thereof under this Agreement.

12. **DESTRUCTION.** If the encroaching structures or any part thereof shall be damaged or destroyed by fire, lightning, vandalism, or by any other casualty or cause, the permission granted hereby shall be automatically terminated unless the parties agree, in writing, to continue to permit the encroachments granted by this Agreement.

13. **NON-LIABILITY OF CITY.** City shall not be liable for any damage or injury which may be sustained by Work/Release or any other person as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, steam, gas, sewer, waste or spoil pipes, roof, drains, leaders, gutters, valleys, downspouts or the like, or of the electrical, ventilation, air conditioning, gas, power, conveyor, refrigeration, sprinkler, hearing or other systems, elevators or hoisting equipment, if any, upon the Encroachment Area, or by reason of the elements; or resulting from acts, conduct or omissions on the part of Work/Release, or their agents, employees, guests, licensees, invitees, assignees or successors, or on the part of any other person or entity.

14. **REMOVAL OF SNOW.** Work/Release agrees to remove or cause to be removed, as the need for the same arises, snow and ice from the Encroachment Area.

15. **ALTERATIONS.** Work/Release covenants and agrees that it will not make any improvements, changes installations, renovations, additions or alterations in and about the Encroachment Area without the prior written consent of the City. Work/Release hereby



agrees to remove, if requested by City, any improvements, additions, installations, renovations, changes on or to the Encroachment Area upon termination of this Agreement. In the event Work/Release fails to remove and is requested to do so by City, then City may remove the improvements, additions, installations, renovations, changes and Work/Release shall pay for the cost of such removal.

16. **ASSIGNMENT AND SUBLETTING.** City and Work/Release agree that the permission to encroach granted hereby may not be assigned by Work/Release without written approval from Norfolk's City Manager.

17. **SURRENDER BY WORK/RELEASE.** Work/Release will surrender possession of the Encroachment Area to City and remove all goods and chattels and other personal property therefrom upon termination of the permission granted hereby. Work/Release shall return the Encroachment Area to the City in as good order and condition as it was at the beginning of Work/Release use of the Encroachment Area. If Work/Release has been requested to remove and fails to remove all items from the Encroachment Area upon termination hereof, City is authorized to remove and dispose of any such personal property and Work/Release shall be liable to City for the cost of any removal and disposal.

18. **INSURANCE.** Work/Release shall maintain in full force and effect a combined single limit policy of bodily injury, death and property damage insurance that coincides with the existing policy for Work/Release of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate insuring City and Work/Release against all liability arising out of the use, occupancy, or maintenance of the Encroachment Area and appurtenant areas, which policy shall be endorsed as primary insurance in favor of City naming the City, its officers, employees, agents and representatives as additional named insured, as evidenced by a Certificate of Insurance provided to the City within thirty (30) days after



adoption of this Agreement. All insurance policies and certificates shall provide for thirty (30) days advance notice in writing to the City Manager if the insurance is cancelled or modified.

19. **FIXTURES.** City covenants and agrees that no part of the improvements constructed, erected or placed by Work/Release in the Encroachment Area shall be or become, or be considered as being, affixed to or a part of the right of way, and any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of City and Work/Release to covenant and agree that all improvements of every kind and nature constructed, erected or placed by Work/Release in the Encroachment Area shall be and remain the property of Work/Release, unless such improvements are not removed upon termination of this Agreement.

20. **ENVIRONMENTAL COMPLIANCE.**

(a) For purposes of this section:

(i) "Hazardous Substances" include any pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Resource and Conservation Recovery Act (42 U.S.C. SS6901 et seq.) (IIRCRAII), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. SS9601 et seq.) (CERCLAII) or any other federal, state, or local environmental law, ordinance, rule or regulation.

(ii) "Release" means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, disposing or dumping.

(iii) "Notice" means any summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from any authority of the Commonwealth of Virginia, the United States Environmental Protection Agency (USEPAII) or other federal, state or local agency or authority, or any other entity or any individual, concerning any intentional act or omission

resulting or which may result in the Release of Hazardous Substances into the waters or onto the lands of the Commonwealth of Virginia, or into waters outside the jurisdiction of the Commonwealth of Virginia or into the "environment," as such terms are defined in CERCLA. "Notice" shall include the imposition of any lien on any real property, personal property or revenues of the Tenant, including but not limited to the Tenant's interest in the Leased Premises or any of Tenant's property located thereon, or any violation of federal, state or local environmental laws, ordinances, rules, regulations, governmental actions, orders or permits, or any knowledge, after due inquiry and investigation, or any facts which could give rise to any of the above.

(b) To the extent that Work/Release may be permitted under applicable law to use the Encroachment Area for the generating, manufacture, refining, transporting, treatment, storage, handling, disposal, transfer or processing of Hazardous Substances, solid wastes or other dangerous or toxic substances, Work/Release shall insure that said use shall be conducted at all times strictly in accordance with applicable statutes, ordinances and governmental rules and regulations. Work/Release shall not cause or permit, as a result of any intentional or unintentional act or omission, a Release of Hazardous Substances in the Encroachment Area. If any such intentional or unintentional act or omission causes a Release of Hazardous Substance in the Encroachment Area, Work/Release shall promptly clean up and remediate such Release in accordance with the applicable federal, state and local regulations and to the reasonable satisfaction of City.

(c) Work/Release shall comply with all applicable federal, state and local environmental laws, ordinances, rules and regulations, and shall obtain and comply with any and all permits required thereunder or any successor or new environmental laws. Upon the



receipt of any Notice, Work/Release shall notify City promptly in writing, detailing all relevant facts and circumstances relating to the Notice.

(d) The requirements of this Section 20 shall apply to any successor in interest to Work/Release, whether due to merger, sale of assets or other business combination or change of control.

(e) Work/Release hereby agrees to defend (with counsel satisfactory to City) and indemnify and hold City harmless from and against any and all claims, losses, liabilities, damages and expenses (including, without limitation, reasonable cleanup costs and attorney's fees arising under this indemnity) which may arise directly or indirectly from any use or Release of Hazardous Substances in the Encroachment Area and losses and claims against City resulting from Work/Release failure to comply strictly with the provisions of this Section 20. The provisions of this Section 20 shall survive the termination of this permission granted by this Agreement.

21. **LIENS OR ENCUMBRANCES.** If because of any act or omission of Work/Release, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against any portion of the Encroachment Area, Work/Release shall, at its own cost and expense, cause the same to be discharged of record or bonded within ninety (90) days after written notice from the City to Work/Release of the filing thereof, and Work/Release shall have the right to contest the validity of such lien if it so chooses.

22. **APPLICABLE LAW.** The permission granted by this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Any suit or legal proceeding relating to permission granted hereby shall be brought only in the state or federal courts located in the Eastern District of Virginia.

23. **WAIVER OF TRIAL BY JURY.** To the extent permitted by law, City and Work/Release mutually waive their rights to trial by jury in any action, proceeding or counterclaim brought by either party against the other with respect to any dispute or claim arising out of the permission to encroach granted to Work/Release by this agreement.

24. **OTHER REQUIREMENTS.**

(a) Work/Release shall comply with all requirements of the City of Norfolk Department of Public Health with respect to the use of the Encroachment Area.

(b) The use of the Encroachment Area shall be subject to the jurisdiction and review of the City of Norfolk's Design Review Committee.

(c) Work/Release use of the Encroachment Area shall not interfere with any water meters or sewer cleanouts.

(d) A trash can compatible in design and style with the table and chairs will be provided for the outdoor dining, and trash shall be removed daily.

(e) Tables and chairs will be arranged according to plan approved by Norfolk's Architectural Review Board.

**IN WITNESS WHEREOF,** Parties have executed or have caused this Encroachment Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

**THE CITY OF NORFOLK**

By: \_\_\_\_\_  
Marcus D. Jones, City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

**759 GRANBY, LLC  
DBA WORK/RELEASE**



By: \_\_\_\_\_  
Print Name:  
Print Title:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Director, Department of General Services

FORM & CORRECTNESS APPROVED:

\_\_\_\_\_  
Deputy City Attorney

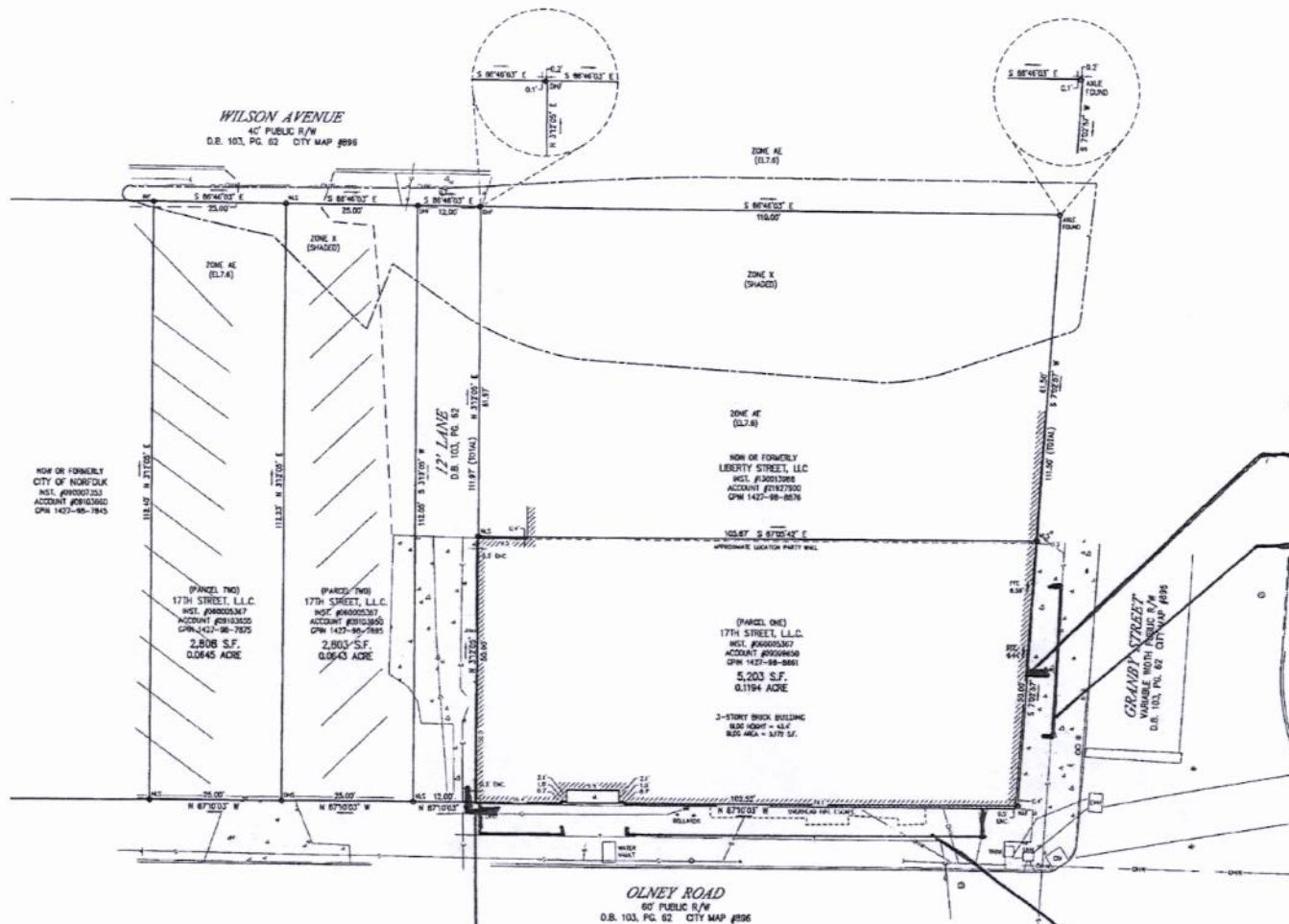
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Vanasse Hangen Brustlin, Inc.

Transportation  
Land Development  
Environmental Services

Two Columbia Center  
4500 Main Street, Suite 400  
Virginia Beach, Virginia 23462  
757.490.0122 • FAX 757.490.0134



0 10 20  
SCALE IN FEET

NO.	PROJECT	DATE	REVISION

Reviewed by: \_\_\_\_\_  
Checked by: \_\_\_\_\_  
Date: April 1, 2024  
Project: Texaco Building

City of Norfolk, Virginia

Rutter Mills

Survey No.

ALTA/ACSM  
Land Title Survey



Sv-2

2 2

Project Number: 73865.00

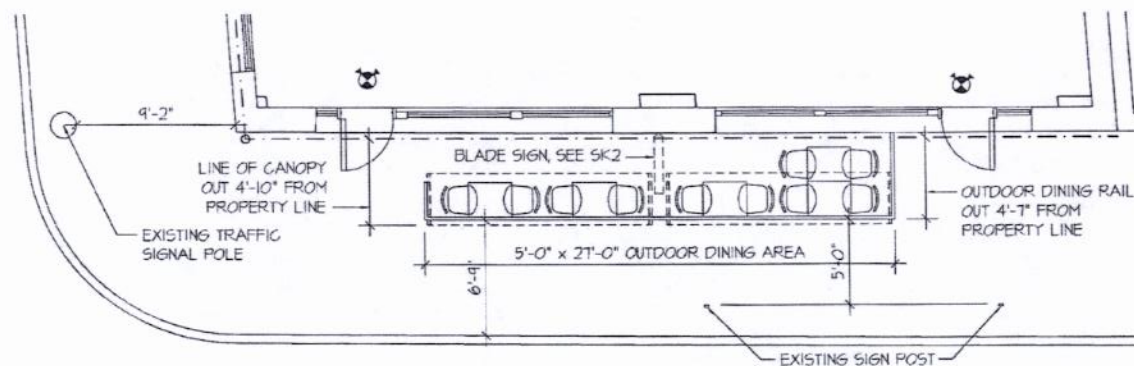
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OUTDOOR DINING ELEVATION (GRANBY STREET)

3/32 = 1'-0"

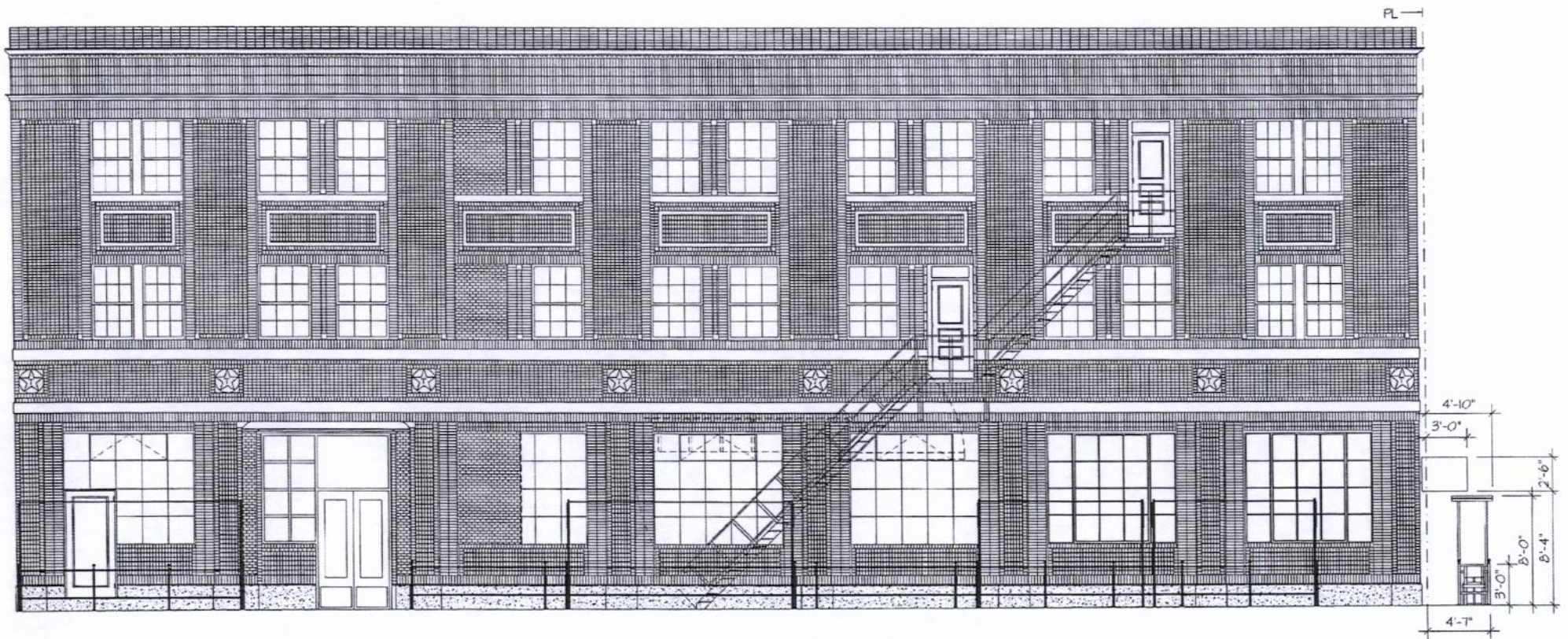


OUTDOOR DINING PLAN (GRANBY STREET)

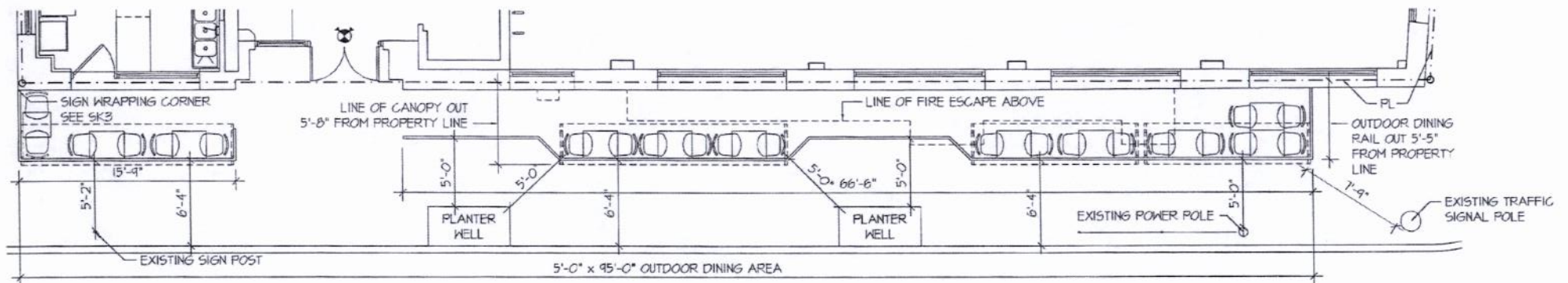
3/32 = 1'-0"

GRANBY OUTDOOR DINING	SKI-A
754 GRANBY STREET	
NORFOLK, VIRGINIA	





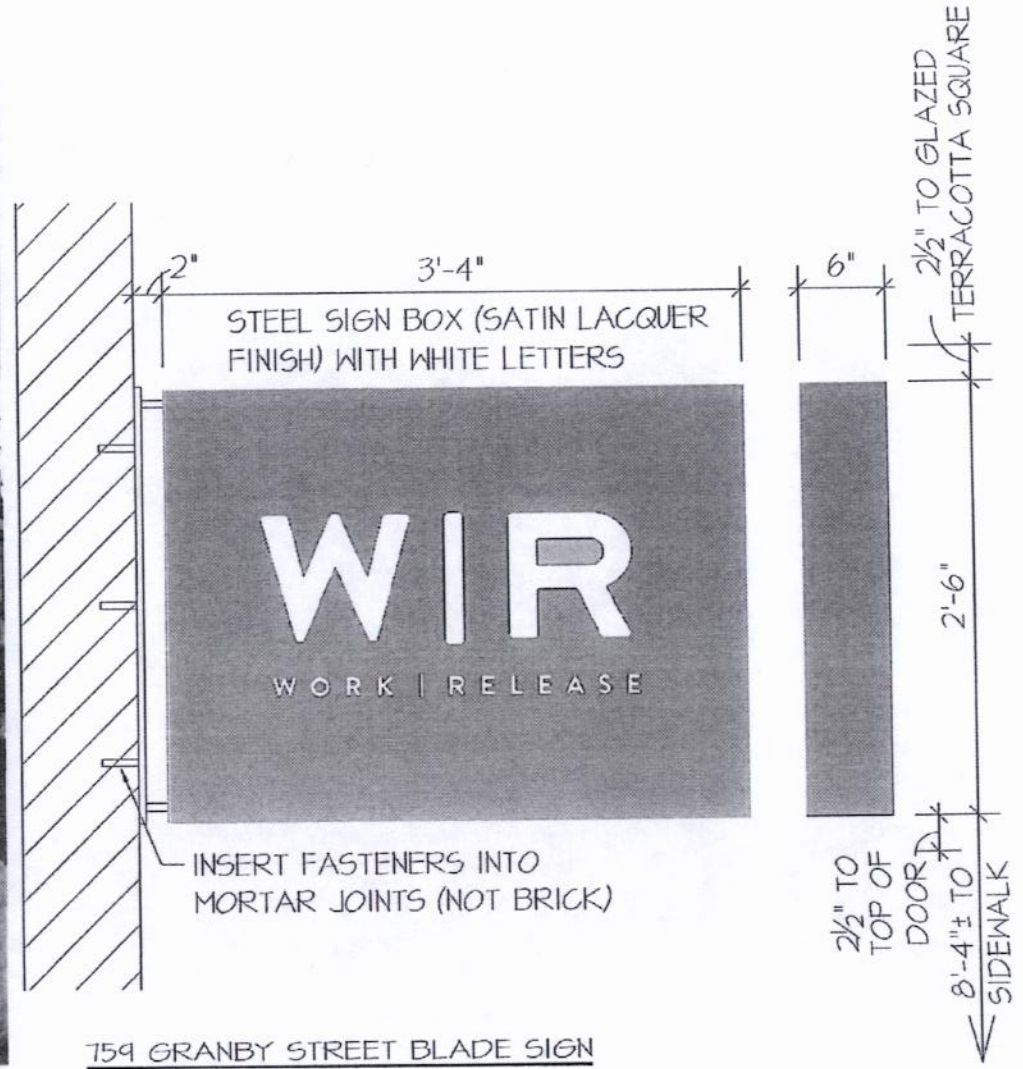
OUTDOOR DINING ELEVATION (OLNEY ROAD)  
3/32 = 1'-0"



OUTDOOR DINING PLAN (OLNEY ROAD)  
3/32 = 1'-0"

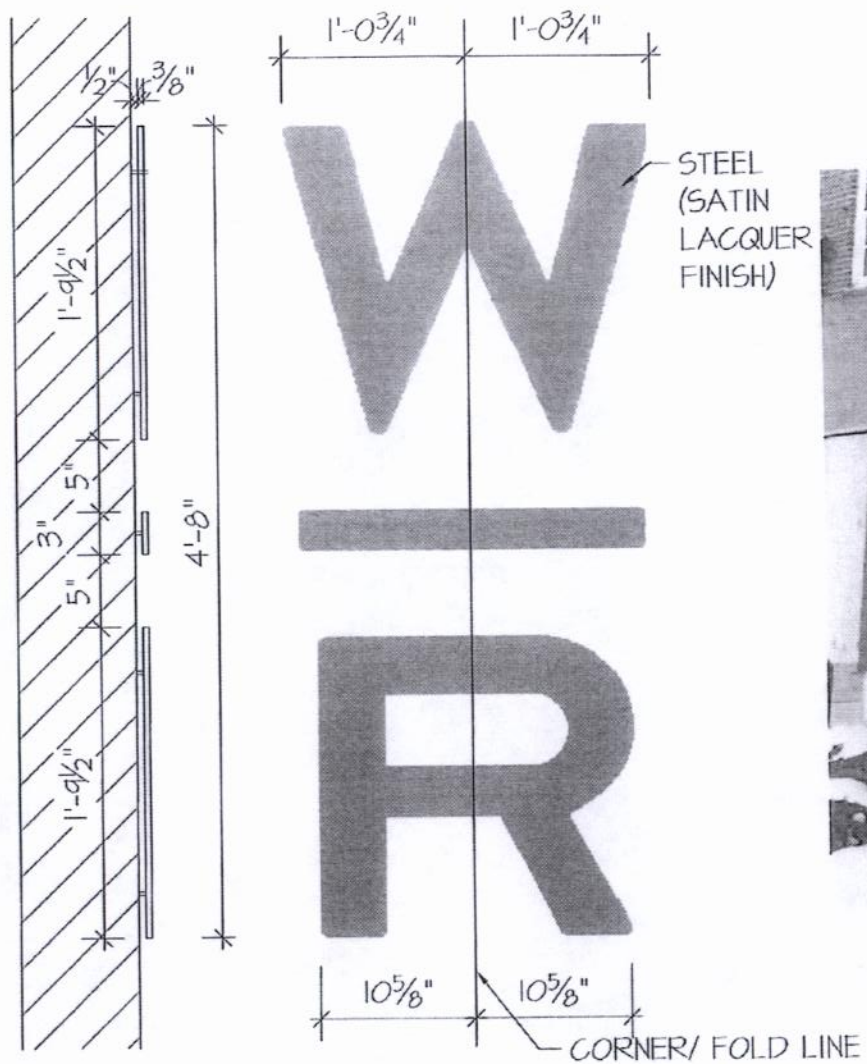
OLNEY OUTDOOR DINING	SKI-B
159 GRANBY STREET NORFOLK, VIRGINIA	





759 GRANBY STREET BLADE SIGN  
1 1/2" = 1'-0"

PROPOSED GRANBY BLADE SIGN 759 GRANBY STREET NORFOLK, VIRGINIA	SK2
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759 GRANBY STREET CORNER SIGN  
 $1\frac{1}{2}" = 1'-0"$

CORNER SIGN AT OLNEY/ REAR	SK 3
751 GRANBY STREET NORFOLK, VIRGINIA	